
**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

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PETITION OF LEAH D. GOITEIN	*	
(trading as Lily Pads Child Care),	*	
<i>for special exception for child day care.</i>	*	No. SE 12-02

LEAH D. GOITEIN,	*	
<i>proceeding pro se.</i>	*	

MARY FORD,	*	
SHIRLEY TENNYSON,	*	
<i>appearing in opposition pro se.</i>	*	

<i>Before: LUTZ ALEXANDER PRAGER, Hearing Examiner</i>		

HEARING EXAMINER OPINION AND DECISION

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I. INTRODUCTION AND SUMMARY.

Leah Goitein petitions to be allowed to expand her home day care program at 6104 Stardust Lane, Bethesda, from a maximum of eight children to a maximum of twelve, and to add a third employee. The Stardust Lane single-family house, which Goitein rents, is located in an R-60 zoning district. The County Zoning Ordinance allows child day homes to locate in R-60 zones by special exception if they meet the standards of § 56-G-2.13.1(a) and other zoning requirements.

I find that Ms. Goitein has met her burdens of proof that a day care center for up to twelve children will have an inconsequential impact on the surrounding neighborhood and satisfies all other zoning requirements. In particular, I conclude that “the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of activity.” § 56-G-2.13.1(a)(2)(5). To assure that Lily Pads’ expansion will have no deleterious effects, I approve the special exception with a few conditions, most of which Ms. Goitein has already agreed to.

Approval of the special exception, with conditions, is consistent with unanimous recommendation by the County Planning Board (Ex. 40) and a similar recommendation by the technical staff of the Maryland-National Capital Park and Planning Commission (38). The technical staff foresaw no meaningful increase in traffic or noise level because of Lily Pads’ expansion; it also concluded that adding four children and one employee would not affect the availability of parking for other residents of the area.

Approval of the special exception is also consistent with the 1989 *Master Plan for the Bethesda-Chevy Chase Planning Area*, which explicitly encourages growing the number of child day care centers, especially small home-based ones, in residential areas. Citing 1987 census data, the Plan states that “the demand for child day care in the Bethesda/Chevy Chase area is increasing due to a growing child population (ages 9 and under) and a high level of employment..” Master Plan at 155. The Plan therefore “supports the location of centers in both neighborhood/residential and employment settings” so long as they are compatible with the surrounding residential communities. *Id.* The Plan anticipates that small child care centers catering to fewer than twenty children will ordinarily not affect neighborhoods adversely: “Recent studies of small child care centers serving 7-20 children suggest that these centers have few negative impacts, including traffic and parking, on the surrounding communities.” *Id.*

Several neighbors object to the Lily Pads’ expansion. Two testified in opposition, Mary Ford and Shirley Tennyson. Three others objected by letter. Their concerns related to traffic, parking, and noise. Ms. Ford and Ms. Tennyson also asserted that a day care home depressed the values of their properties and questioned whether such homes should ever be permitted in residential neighborhoods. I address those concerns below and find them unsupported by evidence or applicable law.

One attendee at the hearing, Ms. Barbara Mendel, questioned whether a lessee can receive special exception approval. T. 5.¹ The Zoning Ordinance makes no distinction between property owners and lessees. And the Master Plan (at 155) comments favorably that many buildings “suitable for day care have been leased for that purpose.”

II. PROCEDURAL RECORD.

All procedural requirements of the Zoning Ordinance and the County Administrative Procedure Act (“APA”) have been satisfied. Ms. Goitein filed her petition on February 14, 2012, with the Office of Zoning and Administrative Hearings (“OZAH”), which accepted it on February 27. See OZAH exhibit list. She filed seventeen exhibits with the petition, including a site plan, certified zoning plan, forest conservation exemption authorization, and statement of operations, among others.² The relevant ones will be discussed in the course of this Opinion.

OZAH issued of notice of public hearing on March 22, 2012, scheduling the hearing for June 28, 2012. Ex. 25. The notice was sent to all adjoining and confronting property owners and local civic and homeowners associations, as well as to relevant government agencies. *Id.* at 2. Ms. Goitein filed an affidavit of posting on June 28, stating that she had properly posted a sign on her leased property showing that a special exception petition was pending. Ex. 41.

The Planning Board and technical staff submitted their recommendations on June 12 and June 22, respectively.

The hearing convened as scheduled on June 28. Ms. Goitein appeared, as did two neighbors who objected to granting the special exception. All three testified and were allowed to cross-examine. I also posed questions to all witnesses.

At the end of the hearing I requested Ms. Goitein to file a statement from her landlord stating that he had no objection to the enlarged day care program and a copy of her current lease. She filed both before the record closed on July 14.

III. FACTUAL RECORD.

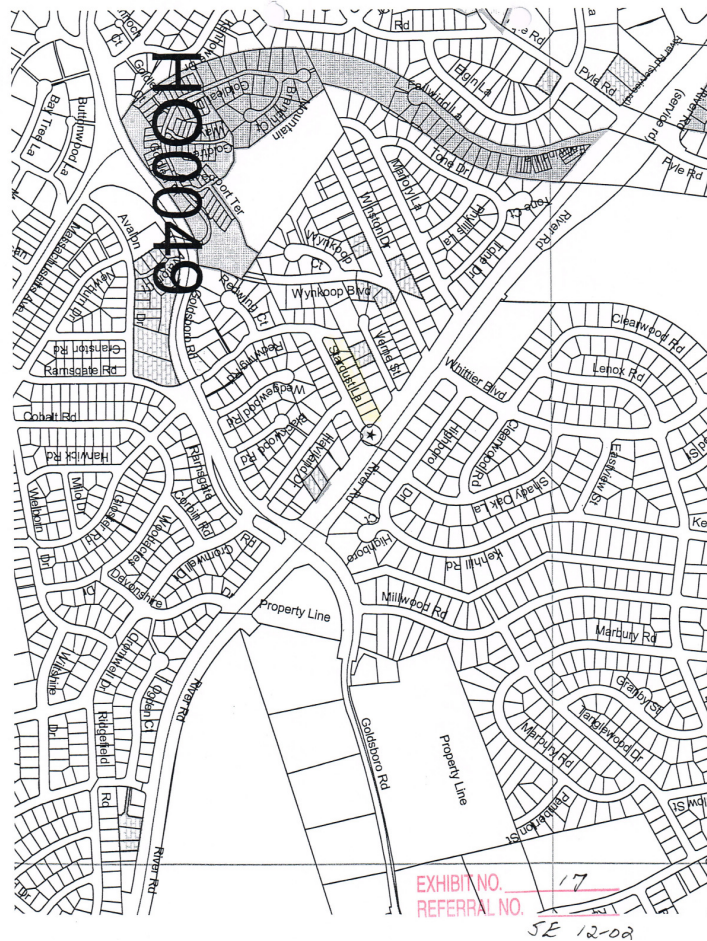
A. THE NEIGHBORHOOD.

The Goitein-leased property is a corner lot at the intersection of Stardust Lane and Haviland Drive. See 17. Stardust is a two-block residential street that empties on River Road at its north end and on Redwing Road to the south. Haviland is a one-block street parallel to River Road between Stardust Lane and

¹ References to the transcript of the hearing are identified as “T. __.”

² At the close of the hearing in this case, Ms. Goitein moved to admit all of the exhibits filed in the OZAH record. Even though there was no objection, I failed to rule on the motion. I now grant the motion and all exhibits are hereby admitted. They’re identified in this opinion as “Ex. __.”

Goldsboro Road. The technical staff report states that both streets are located in the Country Club Forest portion of the 1989 Bethesda/Chevy Chase Master Plan area, as depicted on the vicinity map shown below:



Vicinity Map
Exhibit 17

The technical staff report defines the neighborhood to be used for analyzing the special exception request narrowly: only houses along Stardust Lane, Haviland Drive, and the southern side of River Road between Stardust and Goldsboro – 35 in all. An aerial photograph submitted by staff shows the neighborhood boundaries, as well as the location of the Goitein residence. Considering the small size of the Lily Pads' operation, I accept the technical staff's boundaries. Whatever the effects of the expansion of enrollment, it is implausible to believe that they will spill beyond the boundary of the neighborhood as defined by the staff. An aerial photograph of the neighborhood is shown on the following page.



Technical Staff's Delineation of the
Surrounding Area
(Exhibit 38, p. 3)

The neighborhood is entirely in an R-60 zone. Ex. 6, 6a. Child day care facilities for up to thirty children are permitted in R-60 zones by special exception, § 59-C-1.31. The only other special exception in the neighborhood is a dentist's office at the intersection of River Road and Stardust Lane, two doors north of Lily Pads. Ex. 38 at 3. That office, in a single-family residential structure, is on a corner lot. *Id.* According to the Department report, the office has "adequate driveway and street parking." Ex. 38 at 7.

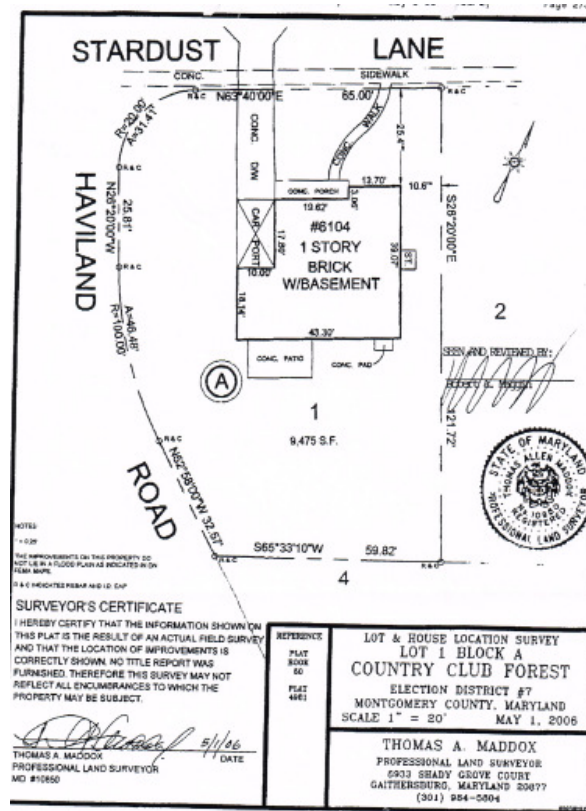
Aside from the dentist's office and Lily Pads, the rest of the neighborhood is purely residential. Each of the houses on Stardust Lane and Haviland Drive has a driveway for off-street parking. *Id.* The record does not disclose whether all of the houses along River Road also have driveways.

B. THE LILY PADS PROPERTY.

The corner lot has an area of 9475 sq. ft. Ex. 5. According to the technical staff report, it contains no forests, streams, flood plains, wetlands, or environmental buffers. Ex. 38 at 1. Given its size – less than 40,000 sq. ft. – the County Forest Conservation Ordinance does not apply. Ex. 8. The Surveyor's Certification Map (Exhibit 5) is shown on the following page.

The lot contains a split-level house with an enclosed area of 2181 sq. ft. Ex. 31. Ms. Goitein and her husband rent the property. Ex. 12, 12(a). Their current lease expires September 29, 2012, less than two months from the time this decision is issued. Ex. 42.

The house's lower level includes a 323 sq. ft. family room (21'11" x 14'8") that, Ms. Goitein testified, has been the main indoor play area for the current enrollment of eight children. Ex. 4; T. 29. The lower level also contains a bedroom, a half bath, and a laundry room. The middle and upper levels consist of living and dining

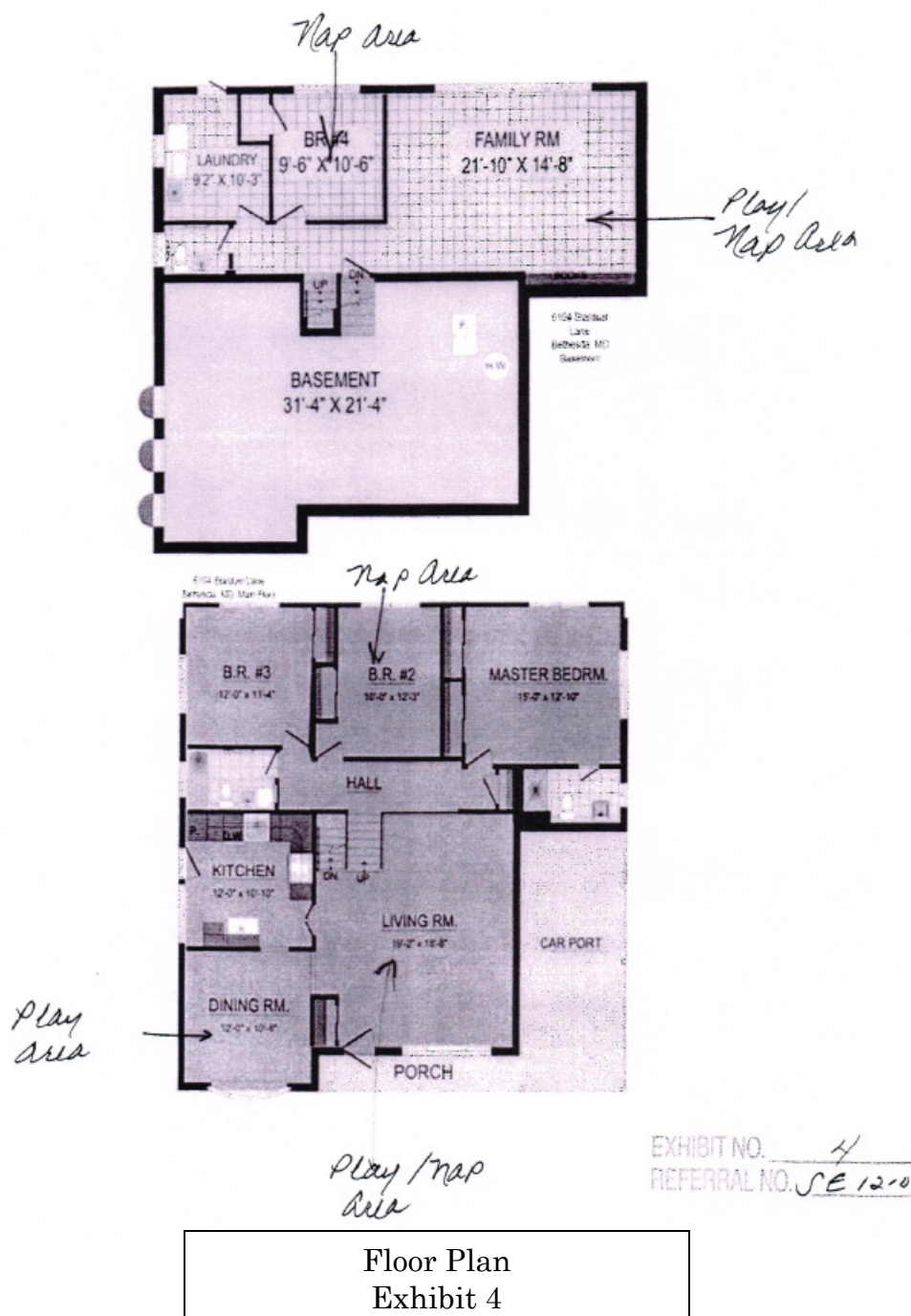


Surveyor's Certification Plat
Exhibit 5

rooms, kitchen, three additional bedrooms, two full bathrooms, and a hallway connecting the bedrooms and bathrooms. See Ex. 4, reproduced on the following page.

The house has a carport for a single car; a driveway from Stardust Drive can hold one, possibly two, additional cars. See Ex. 4; 38 at 2; see also T. 18. Ms. Goitein testified that pedestrian access is over a paved front walkway from Stardust Lane and by an unpaved path to the back door from Haviland Drive. T. 25. Stardust Lane has paved sidewalks but Haviland Drive has none. Ex. 38 at 5; T.25.

The yard at the rear of the house is used as the children's outdoor play area, Ms. Goitein testified. T. 20-21. The yard abuts the intersection of Stardust Lane and Haviland Drive and a neighboring Haviland Drive residence. See Ex. 3(a). Site and landscape plans that Ms. Goitein introduced claim that the play area occupies 3500 sq. ft. but it may be smaller. See 3 and 3(a). The plans are hand-drawn and quite evidently not professionally prepared. Applying the land survey's scale of 1"=20' (5) to the inked in portion on the survey, the play area appears to be only about 3200 sq. ft. See *Id.*



The play area is surrounded by fencing. Along the Stardust/Haviland frontage, the fence appears to be post-and-rail with attached chicken wire. See 10(i). That fence appears to be 3' to 4' tall. See *Id.* Fencing at the property line with the neighboring Haviland Drive property appears to be picket style. See 10(l)-10(m). Some pickets seem to be 3' to 4' tall; some seem taller. Ms. Goitein acknowledges that none of the fencing is board-on-board. T. 22 ("You can see through it, yeah"). Although Goitein's hand-drawn landscape plan (Ex. 3(a)) shows

shrubbery along the property line with the adjacent lot, it is not dense. See Ex. 10(i), 10(l); T. 21 (“you can still see into the yard but not well”). The play area currently contains a swing-set, a slide, and other playground equipment. See Exs. 10(i)-10(m).

According to Goitein’s landscape plan, outdoor lighting consists of a “post” light, carport light, and porch light in the front, and a patio light in the rear. Ex. 3(a). The post and porch lights have 75-watt bulbs, the others 60 watts. *Id.*

Ms. Goitein has posted signs advertising “Lily Pads Child Care,” one on Stardust Lane, another on Haviland Drive. Exs. 10(e); Ex. 14. Exhibit 14 states that the signs are 1.6' x 2' on metal wires. The record does not show if the signs were approved by the Department of Permitting Services. There was no testimony on the subject.

C. PARKING.

Aside from parking available in the carport and driveway, parking is available on bordering streets. The technical staff report states that, “[b]ecause the property is a corner lot, approximately six on-street parking spaces are located along the property frontage. Homes on Stardust Lane and Haviland Drive have driveways for off-street parking, which allows for an adequate number of available on-street parking spaces in the vicinity of the subject property.” Ex. 38 at 7.

Photographs in the report, including the aerial view, showing largely empty streets reinforce the report’s analysis. *Id.* at 6, 7.



Stardust Lane, view looking north



Haviland Drive at Stardust Lane

D. TRAFFIC.

With twelve children enrolled, it is possible that as many as twelve trips will arrive at the Stardust/Haviland intersection to let off children during the morning rush hours and twelve trips will turn up during the afternoon rush hours to retrieve them. That will be an increase of four trips in the morning and four in the afternoon.

Although there will be an increase in traffic, the technical staff report notes that none of these trips are deemed to be “new” traffic because “all of the drop-off’s and pick-up’s are expected to be ‘pass-by’ or ‘diverted’ trips (which are trips oriented to another primary destination and already on roadways adjacent to site).” Ex. 38 at 6; *Id.*, att. C at 3.

With enlargement of enrollment, Ms. Goitein intends to double her hired staff, from one to two. Ex. 9 at 2. Both will arrive during the morning rush and leave during the afternoon rush. T. 24. The technical staff report deems their arrival and departure to generate two “new” peak-hour trips during the morning and evening peaks. Ex. 38 at 6; *Id.*, att. C at 3.

E. PROPOSED OPERATIONS.

Ms. Goitein holds a Maryland Department of Education certificate (no. 155940) certifying that she is registered to operate a family child care home for up to four infants and for an unspecified number of children under six years old. Ex. 13.

By increasing Lily Pads’ enrollment from eight to twelve children, Ms. Goitein alters the way her business is treated under some provisions of the Zoning Ordinance. In an R-60 zone she may provide child care for up to eight children but needs special exception approval when enrollment is larger. Sec. 59-C-1.31. The

Zoning Ordinance divides child day care facilities into several categories³. If there are fewer than eight children under six years old and no more than two non-resident staff members, the Zoning Ordinance labels the facility a “family day care home.” That’s what Ms. Goitein has been running as a matter of right for the past two years or so.

The expansion of enrollment to twelve children places Lily Pads into a different category, that of “group daycare home.” The Ordinance defines such a facility as:

- A dwelling in which child day care services are provided:*
- a. in the home where the licensee is the provider and is a resident;*
 - b. for 9 but not more than 12 children including the children of the provider, and;*
 - c. where staffing complies with state and local regulations, but no more than 3 non-resident staff members are on site at any time.*

As noted, a group day care home requires special exception approval in an R-60 zone.

Ms. Goitein’s statement of operations states that Lily Pads opened in January 2010. Ex. 9. Fifteen children are enrolled but, because she has been allowed to have only eight children at a time, most can come only two days a week, although a few are full time. *Id.* at 1; T. 9. As of February 2012, enrollee ages ranged from four months to over three years. Ex. 9 at 1. Two children are infants (two years old or younger) but Goitein’s State registration allows her to care for as many as four. Ms. Goitein’s sole employee has been working with her from the beginning. *Id.*

With special exception approval, the most significant change Ms. Goitein plans to make, aside from the increase in enrollment, is the hiring of an additional employee to take care of the infants. *Id.* at 2. The infants will have a separate room in the house. *Id.*

Hours of operation will continue to be from 8 a.m. to 6 p.m. weekdays only. *Id.* According to Goitein’s statement of operation, arrivals and departures are staggered. Parents come at intervals, so that two or three children arrive at 8 a.m. and two or three more arrive each quarter hour until 9:15 a.m. *Id.* Pickups occur throughout the afternoon, from 2:30 p.m. on, with one or two children leaving at a time. *Id.* Parents usually remain ten minutes or less. *Id.*

Ms. Goitein plans no change to the exterior of the property but will be adding a battery back-up for her fire alarm. She also plans to invest in more cribs, “exersaucers,” high chairs, mats, and toys. *Id.*

³ The definitional section of the Ordinance uses two separate words: “day care.” Elsewhere in the Ordinance, as in §59-G-2.13.1, the Ordinance combines the words as “daycare.” I use the former spelling in this opinion.

F. AGENCY RECOMMENDATIONS.

Both the Planning Board and technical staff recommended approval of the special exception, subject to conditions.

The staff's 14-page report concluded that Ms. Goitein's application met all applicable requirements for a group day care program and that Lily Pads' expansion would not harm its neighbors. Ex. 38. In particular, the staff report concluded that parking for the proposed expansion was readily available in the neighborhood and that increased traffic caused by the expansion would be inconsequential. *Id.* at 6. Appended to the report was an Adequate Public Facilities ("APF") analysis prepared by departmental staff finding that the changes in traffic were consistent with the APF's Local Area Transportation Review element. *Id.*, att. C at 3. The APF analysis also concluded that no mitigation of traffic was required under the Policy Area Mobility Review. The Department's conclusions are discussed later in this opinion.

The Department recommended that approval of the special exception be subject to four boilerplate conditions:

1. All evidence, testimony and exhibits of record are binding on the applicant.
2. The group day care use must be limited to 12 children not older than four years of age, and two non-resident employees.
3. Permitted hours of operation are Monday through Friday, 8:00 a.m. to 6:00 p.m.
4. The applicant must comply with Maryland State and Montgomery County standards for the operation of a child day care facility.

Ex. 38 at 1a.

The Planning Board's one-page letter stated that its commissioners had voted unanimously for approval. Ex. 40. The Board recommended that the staff report's second condition be amended to allow Lily Pads to enroll children as old as six: "The group day care use must be limited to 12 children ~~not older than four years of age~~ who are less than six years of age and not yet attending elementary school, and two non-resident employees." *Id.*

The Board also urged that I consider adopting two measures to muffle noise. One was to limit the number of children outdoors at a time to ten. The other was to require board-on-board fencing around the play area. (I adopt the latter but reject the former as unnecessary).

G. TESTIMONY.

Ms. Goitein testified on her own behalf and called no witnesses. Mary Ford and Shirley Tennyson testified in opposition. Barbara Mendel also appeared but did not cross-examine or testify. See T. 18, 51.

1. Applicant's testimony.

Ms. Goitein repeated and amplified the statements in her statement of operations. She testified that, aside from being registered with the State, she was certified to administer first aid and cardio-pulmonary resuscitation ("CPR") and to intervene when children exhibit sudden infant death syndrome ("SIDS") symptoms. T. 8. Her new employee will have to meet County and State standards for day care workers. T. 16. These include a criminal background check, a ninety-hour certification course, first-aid, CPR, and SIDS training, and a nine-hour "communications" course. *Id.*

Unlike many child care programs in the area, Goitein testified, Lily Pads is a full-time program, from 8:00 to 6:00. T. 8, 12. It offers a curriculum, including a once-weekly music class conducted by a neighbor. T. 8. Although Ms. Goitein applied to enroll as many as twelve children she anticipates she'll have fewer, but wants the margin "just in case." T. 9, 18, 39.

At the time of the hearing, the ages at Lily Pads ranged from ten months to three-and-a-half years. T. 22. She's licensed to take care of children five years old and younger. T. 22, 23. She doesn't plan to have five-year olds but doesn't intend to expel them. T. 23. Most parents remove their children by the time they turn three or four and enroll them in "some type of school program." *Id.* Ms. Goitein is licensed to have four children under two. T. 9. She normally has the full complement of infants: "There's a very high demand for infant care in Montgomery County." T. 29.

The children are outside one or one-and-a-half hours in the morning and another hour in the afternoon, though times and durations vary with the weather and seasons. *Id.*; T. 25-26. In the summer, the morning hour will last from 9:00 to 10:30; in the winter from 10:30 to 11. T. 26. Usually, afternoon outdoor play time lasts from about 4:00 to 5:15 but sometimes extends until every child has been picked up. T. 37. On cross-examination, Ms. Goitein admitted that she sometimes takes the children outside at 3:30 and "we stay out later." T. 38. If that "needs to be adjusted, it can [be]." *Id.*

Ms. Goitein acknowledged that, with expansion, noise level in the back yard will rise – "[o]bviously, four more children can create more noise" – but believed the rise would not be "substantial." T. 10. Most sounds coming from the playground are "happy noises." *Id.* Lily Pads does not play music outdoors or use an amplifying system. T. 34.

Lily Pads has used the "family room" on the lower level for the current complement of children older than two when indoors. T. 29. The family room opens to the outside. *Id.* A bedroom on the same level has been used for napping. *Id.* When the enrollment grows, Ms. Goitein will use the mid-level dining room for three infants, subject to fire marshal approval. T. 30. The living room is already approved for napping and play but she has not been using it because the current enrollment does not need that much room. *Id.* She is also considering using one of

the upper-level bedrooms for napping. T. 31. Goitein testified she is certain that she can provide more than the 35 sq. ft. minimum for each child required by state law (420 sq. ft. for twelve).⁴ *Id.*

Parking in the neighborhood is not difficult, Goitein testified: “it’s never been an issue so far where someone can’t park and pick up their kid or drop off their kid.” T. 13. Two parking spaces exist on her lot and there is “plenty” of on-street parking for the one or two cars that may arrive simultaneously: the pattern is “really one or two cars at once. It’s people on the way to their jobs * * *.” T. 14-15, 17. Although the dental office is a short distance away, “[t]here’s never been an issue with parking with them and with us.” T. 15.

Ms. Goitein testified that the additional parking space necessitated by having an additional employee may not be used. T. 23. Her testimony, however, was conflicting. At one point, she testified that her current employee uses public transportation to come and go: “* * * currently, the employee I have working for me doesn’t drive a car. She just Metros and takes a bus.” *Id.* Later in her testimony, however, she said that she herself parks in the carport and “my employee parks [behind her], it’s a small car. * * * She parks on the next spot.” T. 36. A new employee, she speculated, might use public transportation. T. 24. The current employee arrives shortly before 8 a.m. and leaves by 6 p.m. *Id.* A new employee would arrive later, 8:30 to 9:00, and leave earlier, 5:00 or 5:30. *Id.* Goitein’s husband’s car is not in the neighborhood on weekdays because he uses it to commute to work. *Id.* Normally, he leaves by 7:00 a.m. and returns at 6:00 p.m. T. 36, 37.

Ms. Goitein acknowledged that she didn’t live on a quiet *cul-de-sac*, “[w]e live in a busy neighborhood.” T. 14-15. Parents normally drop their children off or pick them up on Stardust Lane but some use Haviland Drive when the children are out in the playground. T. 25.

Ms. Goitein lives in the house, as does her husband. The lease is signed by others – her brother and sister-in-law – but they don’t live there. Ms. Goitein claimed that a renewal of the lease had dropped her brother and his wife (T. 19) but the renewal that she filed at my request still includes their names. Ex. 42. The current lease expires in September. *Id.*

Ms. Goitein testified that she’s been using public waste disposal services and doesn’t anticipate that she will need additional services with four more children. T. 28. She has two trash barrels, “like everyone else in the neighborhood and that’s all we needed.” *Id.* She will not need additional diaper disposal because she has always had just four infants and is not licensed to have more. T. 28-29. Older children are normally potty-trained. T. 28.

⁴ The 35 sq. ft. standard appears in the Code of Maryland Regulations (COMAR) §13A.16.05.03.

There are two other day care centers about half a mile away on River Road each with over thirty children. T. 26-27.

In response to my questions, Ms. Goitein said she would not object to a condition that children must be accompanied by an adult to and from the doors of her house. T. 32. She agreed that parents need to accompany their children because she could not abandon the other children, “[s]o they’re required to come in to pick up the children.” T. 32.

Ms. Goitein also agreed to a condition that arrivals in the morning be scheduled and staggered. T. 33. She agreed that interviews with current and prospective clients should occur only during non-peak hours. *Id.*

2. Opponents’ testimony.

a. Ms Mary Ford testified that she lives directly across the street from the Goitein house at 6105 Stardust Lane. T. 4, 43. She has a direct view of “of everything that goes on over there which is mostly normal.” T. 43.

Her major objection to the proposed expansion is that it will increase traffic congestion on Stardust Lane, a small, two-block-long street. T. 44. Stardust Lane already is burdened by traffic trying to avoid congestion at River and Goldsboro Roads. *Id.*; T. 46. In addition, students from Whitman High School “come roaring down our street after school’s out.” T. 44. Even with eight children at Lily Pads, “everybody pulls up to her house and lets off people and sometimes, it gets very congested. Not every day, not every minute, but sometimes it does.” *Id.* Twelve trips in the morning and twelve in the afternoon will add to the congestion. T. 45. Asked to clarify how four additional trips in the morning and afternoon affected congestion, she testified: “Well, it’s people coming and going, coming and going, dropping off kids and picking them up. That’s what I mean by congestion. * * * I think it’s too much.” T. 47.

Ms. Ford also objected because any business in a residential neighborhood drives down property values. T. 44, 46. It also wasn’t “fair, or maybe even legal, for somebody to come into a residential neighborhood, plopp down a sign in the front yard and open a business.” T. 45.

b. Ms. Shirley Tennyson lives at 6320 Haviland Drive, directly across the street from Ms. Goitein’s back yard. T. 4, 48. .

Ms. Tennyson objected to noise from Lily Pads: “In the afternoon, the children are there from about 3:30 until 6:00 which causes a lot of noise.” T. 49. She also objected to having “12 more cars in the morning and afternoon rush congesting our streets.” *Id.* She recounted that Ms. Goitein’s back yard had been “littered” with toys and playground equipment in rain and snow until a neighbor complained. T. 48, 50. Goitein had then put up a tent to house the toys. *Id.* According to Ms. Tennyson, Lily Pads’ presence had affected the value of her property. *Id.* She had not, however, had her property appraised. T. 50.

3. Goitein’s rebuttal testimony.

Ms. Goitein denied the other witnesses' claim that parents with children at Lily Pads were among those who "whiz" down the local streets. T.52. She agreed that the streets were busier than "we'd like" but she believed her day care home hadn't much impact on traffic. *Id.*

Ms. Goitein stated that she had ordered a tent to store toys as soon as she was made aware of neighbors' objections. T. 52-53. Although she is required to provide toys, and is not required to store them out of sight, "I agree with you that I don't need to keep them out during the day." T. 53.

H. COMMUNITY SUPPORT AND OPPOSITION.

The record contains nine letters supporting the Goitein application. Ex. 15(a), 15(b), 15(c), 15(d), 21, 26, 30, 32, 33. Of those, only one is a present neighbor. Ex. 32; see T. 40-43. The remainder are from clients or former neighbors. The thrust of their comments is that Lily Pads is well run and provides excellent care. Ms. Goitein also filed a list of supporters containing seventeen signatures. Ex 36. None of the signatories has an address within the neighborhood.

There were five letters in opposition, including one each from Ms. Ford, Tennyson, and Mendel (22, 24, 28). The letters from two opponents who did not appear at the hearing focused on parking, traffic, and waste collection. Ex. 27, 29. One complained that parents often park far from the curb, impeding traffic. Ex. 29.

IV. DISCUSSION AND CONCLUSIONS.

A. INTRODUCTION.

The Maryland Court of Appeals describes special exception provisions in zoning ordinances as legislative judgments "that the exception or use is desirable and necessary." *Montgomery County v. Butler*, 471 Md. 271, 294, 9 A.3d 824, 837 (2010), quoting *Mossburg v. Montgomery County*, 107 Md. App. 1, 7-8, 666 A.2d 1253 (1995). In *Creswell v. Baltimore Aviation Serv., Inc.*, 257 Md. 712, 719, 264 A.2d 838, 842 (1970), the Court characterized a special exception as "a use which has been legislatively predetermined to be conditionally compatible with the uses permitted as of right in a particular zone * * *."

Although a special exception use may be desirable in the abstract, approval is not automatic. Approval can be denied if "facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use * * *." *Butler*, 471 Md. at 303, 9 A.3d at 843, quoting *Schultz, v. Pritts*, 291 Md. 1, 15, 432 A.2d 1319, 1327 (1981). In Maryland "each applicant must prove actually, to the satisfaction of the administrative decision-maker (subject to the narrow standards for judicial review and applicable constitutional principles), that his/her/its application will be compatible with the uses on (or future permitted use of) other properties in the neighborhood." *Id.*

The Montgomery County Zoning Ordinance explicitly warns that "[t]he fact that a proposed use complies with all specific standards and requirements to grant

a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.” Sec. 59-G-1.2.1. See *Butler*, 471 Md. at 291, 9 A.3d at 835 (under the County’s zoning Ordinance, “presenting a *prima facie* case meeting the County Code’s standards and requirements applicable to specific special exception use does not ensure the approval of the special exception application”).

Whether a proposed use has a significantly adverse impact on the surrounding properties turns on the particular evidence in the record. Zoning authorities in this County are not expected merely to “measure and assess what the adverse effects of a proposed use would be on an idealized or even *average* neighborhood or property in the zone. Rather, * * * it is for the zoning board to ascertain in each case the adverse effects that the proposed use would have on the specific, *actual* surrounding area.” *Butler*, 471 Md. at 305, 9 A.3d at 844; italics in original; footnote omitted. Under the County’s Zoning Ordinance, the applicant bears the burden of proof. Sec. 59-G-1.21(c).

My review of the record leads me to the conclusion that Ms. Goitein has satisfied all applicable general and specific standards of the Zoning Ordinance and that the increase in Lily Pads’ enrollment will not materially adversely affect *this* neighborhood. In particular, I conclude that there is more than sufficient parking in the neighborhood for parents transporting their children to the group day care home. Although there will be an increase in traffic along Stardust Lane and Haviland Drive (as many as five extra trips daily, morning and afternoon), traffic can be staggered so that the increase will have no significant impact. To soften whatever slight effect the increase might otherwise have, I include a condition to approval of the special exception to ensure that arrivals and departures in the morning hours are staggered. The addition of four small children may also increase noise levels, as Ms. Goitein conceded, but it’s unlikely that the increased volume will be more than slight. In any event, in order to contain noise, I adopt the Planning Board’s suggestion that the backyard playground be surrounded by a privacy fence. The Board’s suggestion that the number of children outside be limited to nine strikes me as unnecessary because of the new fence. Finally, I conclude there is nothing in the record to suggest that the increase in Lily Pads’ size will have unusual effects on property values in the neighborhood.

I explain my reasoning as I examine each of the Zoning Ordinance’s applicable provisions.

B. STANDARD FOR EVALUATION, § 59-G-1.2.1.

The following standard of review applies to all special exceptions applications:

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on

nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

A special exception, in other words, cannot be denied simply because the use will spawn effects that are common attributes of – “inherent” in – that use. The legislature has already decided that the use is permissible in the abstract despite its inherent adverse consequences.

There are several “inherent physical and operational characteristics” common to all group day care homes: traffic to and from the site; a need for space to drop off and pick up children; noise from children playing outside; a need for parking for staff; and outside lighting to illuminate entryways and outdoor play areas during parts of the year. *Cf.* 38 at 9. Ms. Goitein’s group day care home necessarily shares those characteristics. The inherent adverse effects they cause cannot justify denial of her application because § 59-G-1.2.1 explicitly says so: “[i]nherent adverse effects alone are not a sufficient basis for denial of a special exception.”

The issue here is whether there are circumstances in this case that cause *unusual* – “non-inherent” – adverse effects sufficient to warrant denial of the Goitein application. As the Court of Appeals phrased it: “[T]he appropriate standard to be used in determining whether a special exception * * * should be denied is whether there are facts and circumstances that show that the particular use proposed *at the particular location* proposed would have any adverse effects above and beyond those inherently associated with such a special exception use * * *”), *Butler*, 471 Md. at 305, 9 A.3d at 844, quoting *Schultz v. Pritts*, 291 Md. at 15, 432 A.2d at 1327; brackets, ellipses, and italics added by *Butler*.

I find nothing in the record to suggest anything unusual in this case. Neither did the Planning Board or the technical staff report. The Goitein property is typical of the area. If anything, the lot is more spacious than some, allowing an expansive adequate outdoor playground. The play area does not directly abut a neighbor’s house. Because Lily Pads is situated on a corner lot, there is easy access from two streets. The streets, of typical width in a residential development, appear to offer lots of space for parents to bring and collect their children. Despite opponents’ concerns about parking, the visual evidence is that parking in the area is abundant during the day. The existing house has a normal suburban residential design. Ms. Goitein plans no exterior changes (other than fence she will have to construct

around the playground). The present lighting – a couple of 60- and 75-watt fixtures in front and back – is consistent with residential use and will not change. To be sure, Stardust Lane and Haviland Drive may be heavily traveled by commuters trying to avoid the River-Goldsboro intersection but that's insufficient reason to ascribe non-inherent adverse effects to the minor expansion of Ms. Goitein's group day care home. The hours of Lily Pads' operation are typical of day care centers – here, from 8:00 a.m. to 6:00 p.m., weekdays only. In short, to the extent that the addition of four youngsters causes adverse effects, they are inherent, typical of the use, and expressly permitted by the legislature.

To the extent, however, that the group day care home spawns adverse effects of any kind, they can be ameliorated by placing conditions on the use, especially those mentioned in the previous section (IV.B): erection of a privacy fence; scheduling staggered arrivals. Those conditions, and others, appear in part V of this document.

C. SPECIFIC STANDARDS FOR CHILD DAY CARE FACILITIES, INCLUDING GROUP DAY CARE HOMES.

Section 59-G-2.13.1 of the Zoning Ordinance contains the following criteria:

The Hearing Examiner may approve a child daycare facility for a maximum of 30 children if:

(1) a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site[.]

Ms. Goitein has submitted sufficient plans. They appear in the record as exhibits 3 (site plan and parking layout); 3(a) (landscape and lighting plan); and 5 (surveyor's certification plat). They show all of the data required by subsection 1. The plan will need to be amended to show the privacy fence Ms. Goitein will need to construct as a condition of approval of her petition.

(2) parking is provided in accordance with the Parking Regulations of Article 59-E[.].

The parking arrangements meet the standards of Article 59-E for the reasons elaborated on below in part IV.D.

(3) an adequate area for the discharge and pick up of children is provided[.]

Access to the Goitein house from Stardust Lane is along a front paved walkway to the front door and to/from Haviland over turf through a fence gate to the rear door. There is sufficient street frontage to allow easy access from either street. See pp. 7-8, above. In addition, cars can pull into the driveway when it's not filled with employee cars.

As already said, in order to reduce traffic congestion, one condition for approval of the special exception requires that arrival times in the morning and afternoon be staggered.

- (4) the petitioner submits an affidavit that the petitioner will:*
(A) comply with all applicable State and County requirements;
(B) correct any deficiencies found in any government inspection; and
(C) be bound by the affidavit as a condition of approval for this special exception[.]

Ms. Goitein has filed the affidavit required by this subsection. It appears in the record as exhibit 16. The record also contains a State certification, dated Jan. 1, 2010, that Ms. Goitein is registered to operate a “family child care home.” Ex. 13.

- (5) the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.*

For reasons stated in parts IV.A and IV.B, and as elaborated below, I find that the use here is compatible with the residential area in which it’s located and that it won’t result in becoming a nuisance because of traffic, noise, or type of physical activity.

I will require that the outdoor playground be screened by a privacy fence in order to contain noise.

D. PARKING.

Section 59-E-3.7 of the Zoning Ordinance requires a group day care home to satisfy both the parking needs of the residents of the home and the needs of the non-resident staff. In this case, Lily Pads needs to have four parking spaces, two for the non-residents and two more for the residents of the house. The Ordinance allows the two non-resident staff’s parking spaces to be partially provided on abutting streets.

Section 59-E-3.7 provides in relevant part:

*Child day care facility. For a family day care home or group day care home, one space for every non-resident staff member in addition to the residential parking requirement. The required number of spaces may be allowed on the street abutting the site. * * *.*

Dwelling, one-family. Two parking spaces for each dwelling unit; except, that when the slope between the standard street sidewalk elevation at the front lot line and side lot line adjacent to a street, established in accordance with the county road construction code, and the finally graded lot elevation at the nearest building line exceeds, at every point along the front lot line, a grade of 3 inches per foot, such space shall not be required.

Ms. Goitein can provide the four parking spaces needed. Two cars (possibly three) can be parked on the property itself – in the carport and on the driveway. In addition, the two spaces needed for the two non-resident employees can be located on Stardust Lane and Haviland Drive. From the photographs included in the technical staff's report, it's evident that parking along both streets is plentiful. There should be no difficulty in finding two parking spaces for staff.

E. GENERAL CONDITIONS, § 59-G-1.21.

Section 59-G-1.21 establishes several criteria to assess whether the special exception use applied for meshes with the particular location chosen for it. Satisfaction of each criterion must be established by a preponderance of the evidence.

I address each criterion in turn and conclude that each has been satisfied by a preponderance of the evidence.

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

Child group day care homes may be located in R-60 zones by special exception. See § 59-C-1.31.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The Goitein proposal satisfies § 59-G-2.13.1 standards. It is small enough to be compatible with the residential nature of the Stardust/Haviland neighborhood. The outdoor playground will undoubtedly generate some noise but the sounds of children playing outdoors are common in most residential areas. Moreover, to repeat, as a condition of approval of the special exception, Ms. Goitein will be required to include a privacy fence around the play area to muffle the sound.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The proposal is consistent with the Bethesda/Chevy Chase Master Plan. As I wrote in part I (above at 2), the Plan explicitly encourages attracting more child care facilities to residential neighborhoods. Plan at 155 (“support[ing] the location of centers in both neighborhood/residential and employment settings” so long as they are compatible with the surrounding residential communities).

Here, like the Planning Board and technical staff, I find no incompatibility between Ms. Goitein’s small group day care home and the surrounding residential community.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The one-family detached dwelling unit in which the day care operates will not undergo exterior alterations (other than the fence) and will continue to be in harmony with the typical homes of the surrounding neighborhood. There will be an extremely modest increase in the intensity of use – four more small kids, one more adult – far less than necessary to make the use incompatible with the neighborhood. Parking is plentiful for the use. Traffic is discussed below.

There are no other group child care homes in the neighborhood. Two, larger, child care centers were said to be located about half a mile away, too remote and too different to affect the neighborhood.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Approval of the special exception will not contribute to commercialization of this long-established residential neighborhood. There is no evidence that property values will change if four small children are added to the current eight. Although

both Ms. Ford and Ms. Tennyson asserted that Lily Pads' expansion will cause property values to fall, they presented no evidence to support their assertion.

Development possibilities in surrounding property or the neighborhood are slight. The neighborhood is already fully developed. Lily Pads will have no effect on additional development, should any be possible.

I find nothing in the record to suggest that increasing the enrollment by four pre-school children will rob neighbors of the peaceful enjoyment of their homes.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Nothing in the record hints that Lily Pads currently produces objectionable vibrations, fumes, odors, dust, illumination, glare, or physical activity. Four more children won't change that. Ms. Goitein plans no changes in the present normal residential lighting. The Lily Pads day ends at 6 p.m.

Noise is generally associated with small children and has to be anticipated in child care facilities. There is nothing unusual about Lily Pads' operation. Children are outside only about three hours a day. In any event, additional fencing Ms. Goitein will be required to erect should dampen sounds. In light of the new fencing, I find little justification for limiting the number of children outdoors to nine, as the Planning Board suggested. The requirement could be unwieldy for Lily Pads' small staff and it's doubtful that three additional children would significantly add to the decibel level. Although I encourage Ms. Goitein to consider splitting the number of children outside at any one time – perhaps by scheduling the four infants separately – I won't require it.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

There is a single other approved special exception in the neighborhood, the dental office at the corner of Stardust Lane and River Road, two doors from Lily Pads. There is no reason to believe that converting Lily Pads from a day care home for eight children to one for twelve children will adversely affect the neighborhood or change the predominantly residential character of the neighborhood.

In any event, as the Planning Department report states, a group day care home “will provide a service identified and encouraged as part of the master-planning guidance for the neighborhood.” Ex. 38 at 11. By definition, therefore,

under subsection (7) Lily Pads expansion does not alter the nature of the area, provided it has no adverse impact.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

A group day care home for twelve infants, toddlers, and other preschool children won't adversely affect the health, safety, security, morals, or general welfare of the residents, visitors, or workers in the area.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.

(B) If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the growth Policy standards in effect when the application was submitted.

(C) With regard to public roads, the Board or the hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

The technical staff reports that police, fire, water, and sanitary sewer services are already established at 6104 Stardust Lane. No subdivision is necessary.

Lily Pads' expansion may bring five more automobile trips to the Stardust/Haviland intersection during rush hours. This is a minor addition to what the opponents described as heavy traffic from commuters taking shortcuts. I find nothing in the record to suggest that the five added morning and afternoon trips will imperil pedestrians or other vehicles. Indeed, it's most likely that parents bringing their small offspring to the site will be especially careful about safety.

The staff report states that Lily Pads' growth meets the requirements of the "Local Area Transportation Review ["LATR"] and Policy Area Mobility Review ["PAMR"] Guidelines," published by the Planning Commission and last revised on July 2011. The Guidelines are issued pursuant to the County's Adequate Public

Facilities (“APF”) Ordinance, M.C. Code § 50-35(k) and the County’s Annual Growth Policy, County Council Resolution 16-1187.

According to the technical staff report (Ex. 38 at 7):

The applicant estimates that approximately 4-6 children arrive or depart during the peak-hour (7:00-9:00 am and 4:30-6:30 pm) for a total of 8-12 peak hour trips, and all of the drop-off’s and pick-up’s are expected to be “pass-by” or “diverted” trips (which are trips oriented to another primary destination and already on roadways adjacent to site). The proposed day care will not generate any net “new” peak-hour trips during the morning and evening peak-hours, but the two staff persons in addition to the applicant generate two “new” peak-hour trips during the morning and evening peak periods. * * *

Based upon documentation from the site trip generation above, the petition satisfies the LATR requirements of the APF test. The petition is not subject to the PAMR requirements of the APF test because the proposal will generate less than four “new” peak-hour trips during the weekday morning and evening peak periods. Since the proposed child day care will not generate 30 or more “total” peak-hour trips during the weekday morning and evening peak periods, a traffic study is not required for the subject petition.

The analysis is plausible. I defer to the staff’s expertise in interpreting its own Guidelines and in applying them to the facts in this case.

(b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board’s finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

No finding is necessary.

(c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Ms. Goitein presented substantial evidence (supplemented by the staff report) that her application satisfies applicable Zoning Ordinance standards. She has satisfied her burdens of proof.

F. GENERAL DEVELOPMENT STANDARDS, § 59-G-1.23.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special

exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

The Planning Department reports that the Goitein lot meets all development standards for the R-60 zone, as shown in the following table (Ex. 38, p. 8):

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Minimum Lot Area	6,000 sq ft	9,475 sq ft	§59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft	65 ft	§59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft	57 ft	§59-C-1.322(b)
Setback from Street	25 ft	25 ft	§59-C-1.323(a)
Side Setback from adjoining lot	8 ft	10.5 ft	§59-C-1.323(b)(1)
Rear Yard Setback	20 ft	36 ft	§59-C-1.323(b)(2)
Building Height	35 ft	25 ft	§59-C-1.327
Building Coverage	35 percent	29.5 percent	§59-C-1.328
Parking Facility Side Yard Setback for Special Exceptions in Residential Zone	16 ft	28 ft	§59-E-2.83(b)
Parking Requirement	2 spaces for employees; 2 spaces for dwelling unit	4 spaces total	§59-E-3.7

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

The proposed use satisfies all parking requirements in Article 59-E. See part IV.D above.

*(c) Minimum frontage. * * **

This subsection, by its terms, applies only to a few special exception uses. Child day care centers are not among them. The subsection is therefore inapplicable.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Ms. Goitein received a forest conservation exemption certificate. Ex. 8. She has no plans to remove any trees.

*(e) Water quality plan. * * **

The subsection applies only when land disturbance in a Special Exception Area is planned. No land disturbance will occur here. The subsection is therefore inapplicable.

(f) Signs. The display of a sign must comply with Article 59-F.

Ms. Goitein currently has a sign erected on Stardust Lane and another on Haviland Drive. She needs to file a copy of the permit for the existing signs with OZAH before expanding her day care pursuant to this special exception. If she does not have or cannot obtain a permit for the existing signs, they should be removed prior to commencement of operations. Unless both signs have previously been approved, no more than one outdoor sign may be erected in order to help preserve the residential aspect of the site.

A new sign will be allowed only after approval by the Department of Permitting Services and issuance of a permit. The sign may not exceed two square feet and may not be lighted. A copy of the permit must be filed with OZAH before the sign is erected. Petitioner must also amend her special exception plan to show the location of any approved sign prior to commencement of operations as a group day care home.

*(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its sighting, landscaping, scale, bulk, materials, and textures, and must have a residential appearance where appropriate. * * *.*

The only external structure proposed is the board-on-board fence surrounding the play area, which is intended to mitigate any potential noise from the expanded use. The building and property will retain its residential character. Petitioner shall file an amended special exception plan with OZAH showing the location of the fence prior to operation of the special exception.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light

intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

- (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Ms. Goitein plans no change to the current lighting. Operations begin at 8 a.m. and end at 6 p.m. For much of the year, no outdoor lighting will be necessary.

The Planning Department report concluded that existing outdoor lighting is adequate and consistent with the residential character of the neighborhood. Ex. 38 at 9. I agree.

V. DECISION.

Based on the testimony and other evidence in the record, I conclude that the group day care home proposed for 6104 Stardust Lane, Bethesda, meets all of the Zoning Ordinance requirements for such homes and will not have material adverse consequences for its neighbors.

The petition to operate a group day care home at 6104 Stardust Lane for up to twelve children in the existing single-family detached home and grounds is therefore GRANTED, subject to the following conditions:

1. The petitioner, Leah Goitein, shall be bound by all of her testimony and exhibits of record, and by her representations identified in this Opinion and Decision.

2. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a group day care home.

3. In accordance with M.C. Code § 59-G-2.13.1(a)(4), petitioner shall be bound by the affidavit of compliance submitted in connection with this case (exhibit 16), in which petitioner certified that she will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavit as a condition of approval for the special exception.

4. The number of children enrolled at the center shall not exceed 12 children; nor shall it exceed the number of children authorized by State licensing authorities. The ages of the permitted children will be determined by State licensing authorities, but no children shall be permitted to attend after their sixth birthday.

5. The number of non-resident staff present at the facility at any one time may not exceed two. A brief overlap of five minutes will be permitted to allow for a changeover of part-time personnel, if any.

6. The hours of operation will be between 8:00 a.m. and 6:00 p.m., Monday through Friday. Child care shall not be provided on weekends or overnight.

7. Arrival and departure times for the children shall be staggered, through contractual agreements between petitioner and clients, so that no more than six vehicles visit the site within any one hour period to drop off or pick up children.

8. In no event may a child be dropped off before petitioner or a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.

8. Children must be accompanied by an adult to and from the child-care entrance.

9. Petitioner shall construct a board-on-board privacy fence around the outdoor playground, the perimeter of which shall be the same size as the present fencing. The new fence shall be at least 5' tall. No more than eight children may be enrolled in the group child care home until the new fence is fully constructed. Petitioner shall file an amended special exception plan with OZAH showing the location of the fence.

10. No public address system or sound system of any kind shall be used outside the building. Petitioner shall instruct clients that they may not blow their car horn at the site, absent an emergency, including sounding the horn when locking or unlocking their car by remote control.

11. All children must be under the direct supervision of a staff member at all times, inside and outside the building. All gates or other access to the outdoor playground must be secured during outdoor play in a manner that will prevent any child from opening such access and wandering off.

12 Petitioner may use the mid-level dining room for three infants only with fire marshal approval.

13. Petitioner shall maintain the grounds in a clean condition, free from debris, on a daily basis.


14. Interviews of prospective or current clients must be conducted only during non-peak traffic hours to avoid unnecessary impacts on local traffic and parking.

15. Petitioner may not display a sign for the child care facility unless the sign has been approved by the Department of Permitting Services and a permit is obtained. To help preserve the residential aspect of the site, no more than one outdoor sign is permitted (unless both existing signs have previously been approved by the Department). A sign, if erected, may not exceed two square feet and may not be lighted. A copy of the permit should be filed with OZAH before any sign is posted. Petitioner shall not commence operation of this special exception approval unless and until a copy of the Department's permit is filed and petitioner's special exception plan is amended to show the location of the approved sign.

16. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special

exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

SO ORDERED.



Lutz Alexander Prager
Hearing Examiner

August 9, 2012

NOTICE OF RIGHT TO APPEAL

Any person, board, corporation, or official aggrieved by this decision may, within ten days after the decision is rendered, appeal the decision to the County Board of Appeals in accordance with the provisions of § 59-G-1.12(g) of the Zoning Ordinance.

Cc: all parties of record.